

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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ROBERT R. ALFORD  
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UNITED STATES OF AMERICA, )  
Plaintiff, )  
v. )  
STATE OF TENNESSEE, et al., )  
Defendants. )  
PEOPLE FIRST OF TENNESSEE, )  
PARENT-GUARDIAN ASSOCIATION OF )  
ARLINGTON DEVELOPMENTAL CENTER,)  
Intervenors. )

No. 92-2062 MI/A

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ORDER ON COMMUNITY PLAN FOR WEST TENNESSEE

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This matter is before the Court on defendants' motion to approve the Community Plan for West Tennessee, filed March 20, 1997. For the reasons set forth below, the Community Plan is APPROVED by the Court with certain modifications and ORDERED as an enforceable Order of this Court.

I.  
Background

The Community Plan arises out of a settlement between the parties of the United States' fourth motion for contempt regarding conditions at Arlington Developmental Center ("ADC"). In its motion for contempt, the United States, relying in part on the Monitor's Second and Third Semi-Annual Compliance Reports, argued that the defendants had failed to comply with the

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153

Remedial Order and other Court orders.

In lieu of sanctions, defendants acknowledged that they were in contempt as to the areas of non-compliance identified in the Second Semi-Annual Compliance Report, with the exception of Section XIV (Admissions and Placement), and agreed to the entry of a Stipulation and Order, dated June 24, 1996. As part of the Stipulation and Order, defendants agreed, inter alia, to develop three plans, including a plan for community placement and development of community services. In general, the Stipulation and Order requires that each of the three plans address the requirements of the Remedial Order and the other Orders of the Court. In particular, the Stipulation and Order specifically requires that the Community Plan contain, at a minimum, several "essential elements," including:

[A]ll citizens shall be evaluated by competent professionals who are members of the IDT for the appropriateness of community placement, and evaluations by consultants independent of the Department of Mental Health and Mental Retardation shall be conducted for those individuals for whom the IDT does not recommend community placement, and collectively these evaluations will form the basis of each citizen's individualized plans which will be implemented by defendants in a manner consistent with applicable federal law and federal funding requirements; citizens who are known or suspected of having been abused or repeatedly injured shall receive consideration for community placement on a priority basis; at least one additional employee shall be hired immediately to work full-time coordinating community placement and development; Defendants will retain and utilize additional qualified consultants in the area of community placement; Defendants will implement a well-defined, effective quality assurance and monitoring system to monitor the placements after they have been made to ensure that the placements are meeting the needs of the individuals placed; and address those elements identified in the Monitor's April 1, 1996 Response.

United States v. State of Tennessee, Civ. No. 92-2062, slip op at 2-3 (W.D. Tenn. June 24, 1996) (McCalla, J.). With respect to these essential elements, the Stipulation and Order unequivocally states:

These essential elements of each plan and other significant portions of the plans shall be

accomplished by dates certain established in the plans and shall be enforceable by the Court.

1996 Stipulation at ¶ II.B.2 (emphasis added).

On March 20, 1997, defendants filed the Community Plan for West Tennessee with the Court. A hearing on the Plan was held on May 9, 1997, and May 13, 1997, at which the Court heard extensive testimony regarding the development of and various aspects of the Community Plan. At the close of the hearing, the Court invited the parties to submit written arguments in lieu of closing arguments. Although the parties have raised a number of issues in their submittals, the two main issues before the Court are whether the Court should approve the Community Plan, and, if so, whether the Court should make the Community Plan an enforceable Order of this Court.

## II.

### Should the Court Approve the Community Plan?

There is little doubt that the Community Plan is an extensive and detailed document. In total, the Community Plan contains eight chapters and approximately 549 specific provisions of services and support to current and former ADC residents. At the hearing on this matter, the Court heard extensive testimony regarding the extensiveness and quality of the Community Plan. Not surprisingly, however, given the broad sweep of the Community Plan and the fact that this represents a paradigm shift by the State of Tennessee in the provision of services to the developmentally disabled, there were a number of problems and deficiencies identified by the parties and their witnesses at the hearing.

A.

Of particular concern to both the United States and People First is the relative scope of the class of former and current ADC residents covered by the Plan. As submitted, the benefits of the Community Plan are limited to those class members still residing at ADC. In its closing argument and proposed order, the United States seeks to extend the benefits and protection of the Community Plan back to March 12, 1991, the date on which it sent the noncompliance letter to the State of Tennessee. In its closing argument, People First seeks to extend the benefits and protections of the Community Plan to the entire class certified in People First v. Arlington Developmental Center, Civ. No. 92-2213, slip op. (W.D. Tenn. Sept. 26, 1995) (McCalla, J.).

On June 24, 1997, defendants filed a rebuttal to the United States' and People First's closing arguments and a motion to strike People First's Second Community Review, which was filed in open court at the hearing held on May 13, 1997. In short, the basis of defendants' motion is that People First has applied an analysis of compliance with the Remedial Order to a portion of the class not covered by the Remedial Order. According to defendants, the protections of the Remedial Order extend only to those who were still residents at ADC on the date the Remedial Order was entered -- i.e., September 2, 1994. In particular, defendants assert that no class has been certified in this case, that the remedy of the Remedial Order does not extend to all class members, including those subject to the review, that applying the Community Plan to all class members would extend the Remedial Order beyond the agreement of the parties, and that there has been no adjudication of the constitutional violations of class members not covered by the Remedial Order.

Defendants' argument that the Remedial Order does not apply to the class is entirely unconvincing. As all of the parties in this case well know, the litigation over the conditions at ADC have involved two parallel and interrelated cases: United States v. State of Tennessee, Civ. No. 92-2062 (W.D. Tenn.) (McCalla, J.) [hereinafter "DOJ case"], and People First v. Arlington Developmental Center, Civ. No. 92-2213 (W.D. Tenn.) (McCalla, J.) ["People First case"]. On September 26, 1995, this Court certified a class in the People First case consisting of "all persons who after December 12, 1989, have resided or are residing at the Arlington Developmental Center, all persons who have been transferred to other facilities but who remain the defendants' responsibility, and all persons at risk of being placed in the Center." By Order dated September 27, 1995, the Court granted People First's Motion to Enter Findings from the DOJ case in the People First case and entered the Remedial Order as a final order in the People First case. Thus, it is beyond dispute that the protections of the Remedial Order extend to all members of the class.

Moreover, in that same Order, the Court granted People First and the Parent-Guardian Association of Arlington Developmental Center ("PGA") intervenor status in the DOJ case, finding that the interests of the class were not adequately represented in the DOJ case and would be adversely affected if they were not accorded intervenor status. By Order dated March 21, 1996, the Court then found that the DOJ case was the proper forum for both People First and the PGA to pursue any further relief such as motions for contempt or motions for further relief. The practical effect of these Orders is that the class, as defined in the People First case, is a viable class in the DOJ case and is entitled to the full protections of the Remedial Order.

Furthermore, as noted above, the Community Plan arises out of a settlement between the United States, People First, and the defendants regarding the United States' fourth motion for contempt regarding conditions at ADC. In its motion for contempt, the United States, relying in part on the Monitor's Second and Third Semi-Annual Compliance Reports, argued that the defendants had failed to comply with the Remedial Order and other Court Orders. In lieu of sanctions, defendants acknowledged that they were in contempt and agreed to the entry of a Stipulation and Order, dated June 24, 1996. As part of the Stipulation and Order, defendants agreed, *inter alia*, to develop three plans, including a plan for community placement and development of community services. Thus, the Community Plan, as developed and agreed to by the defendants, is designed to bring defendants into compliance with the Remedial Order, which, as noted above, applies to all class members.

In sum, it is far too late in the day for defendants to make this argument.<sup>1</sup> Accordingly, the Court adopts the position of People First and MODIFIES the Community Plan so that its benefits and protections extend to all members of the class in People First v. Arlington Developmental Center.<sup>2</sup> Accordingly, defendants must extend the services, benefits, and

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<sup>1</sup> This conclusion should come as no surprise to the defendants. On the contrary, as late as May 13, 1997, the defendants themselves were acknowledging that the benefits of the Remedial Order and the Community Plan extended to all members of the class. For example, Lynn Rucker, the primary author of the Community Plan, testified that the Community Plan applied to all class members. Likewise, Rick Campbell, the director of the Commission on Compliance, testified that the benefits of the Remedial Order and Community Plan extended to those class members discharged before the entry of the Remedial Order.

<sup>2</sup> Even assuming that the Remedial Order did not extend to the entire class, the Court, consistent with the position of the United States, finds that the benefits of the Remedial Order and, consequently, the Community Plan extend to those individuals who were residing or have resided at the Arlington Developmental Center since March 12, 1991, the date on which the United States sent the noncompliance letter to the State of Tennessee. This conclusion rests not only on the evidence before the Court but on this Court's previous findings of unconstitutional conditions at ADC. In its Findings of Fact, dated February 17, 1994, the Court found that "the evidence shows that

protections of the Plan to all former residents of ADC who are also members of the class certified in People First v. Arlington Developmental Center.<sup>3</sup>

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conditions at Arlington Developmental Center in 1990, 1991, and 1992 . . . and continuing through the present, do not comply with minimal requirements under the Fourteenth Amendment." A number of residents who were subjected to these unconstitutional conditions at ADC, however, were discharged from ADC just prior to the trial in this case. Indeed, the trial testimony of the former Superintendent of ADC and accompanying exhibits made clear that the placement of those individuals occurred as a result of the United States' investigation and lawsuit. Tr. at 206-214 (testimony of Mona Winfrey, Sept. 13, 1993); Tr. Exh. 271 & 272.

In reviewing these placements, the Court found that defendants had not exercised professional judgment in discharging these individuals: "None of the medical staff at ADC are charged with or are taking the responsibility to evaluate or coordinate resident discharges into the community in light of their potential medical needs. Although community placement may be appropriate for residents of ADC and may serve to foster the resident's growth and development, Defendants' placement process or 'dumping' does not reflect the exercise of professional judgment." Findings at 29-30 (emphasis added). In essence, defendants haphazardly discharged residents of ADC in an attempt to thwart the United States' investigation.

Not surprisingly, the parties are now reporting that this "dumping" has led to inadequate conditions in the community settings. At the hearing held on May 13, 1997, People First's expert, Ruby Moore, directly related this "dumping" to the inadequate conditions existing where several children now reside:

Some people were moved in the middle of the night hurriedly . . . in their haste some things happened that made placements even less adequate and appropriate, such as people coming out and having someone else's wheelchair or people . . . didn't have their adaptive equipment.

Tr. at 306 (Testimony of Ruby Moore, May 13, 1997). People First's recent review of its class members' community placements identified several additional deficiencies. For example, People First found the following deficiencies for children placed before the entry of the Remedial Order: unsafe feeding practices; inadequate seizure management; inadequate medication follow-up; use of inappropriate medications or medications contraindicated; inadequate medical follow-up; scoliosis not addressed even though the record indicated that it was worsening; recommended treatment withheld because there was no insurance coverage; TennCare refused to pay for needed leg braces for one individual; skin breakdown not being prevented or properly cared for; staff not keeping adequate data to provide appropriate care; functional assessments not being completed by any staff who are members of the IDT, and consequently appropriate services and programming are not being identified. In short, the parties are reporting that many of the same conditions now exist in the community that gave rise to this lawsuit in the first place.

Contrary to defendants' assertions, this Court did not lose its authority to remedy the effects of the constitutional harms suffered by the residents of ADC merely because the State discharged those residents from ADC prior to the entry of the Remedial Order. See Thomas S. v. Flaherty, 902 F.2d 250 (4th Cir. 1990); Armstead v. Coler, 914 F.2d 1464 (11th Cir. 1990); Williams v. Wasserman, 937 F. Supp. 524, 526 (D. Md. 1996) (holding that "this court's jurisdiction over the plaintiffs' claims cannot be terminated simply by operation of their release from various institutions in which they are or have been housed during the pendency of this lawsuit"). Indeed, defendants cannot avoid the jurisdiction of this Court merely by moving individuals from one unconstitutional environment to another prior to the entry of judgment in the case. Accordingly, the Court finds, alternatively, that the Community Plan covers those who have resided at ADC since March 12, 1991.

<sup>3</sup> In addition, both the United States and People First have requested that the State be found in contempt on the basis of the Monitor's recent review and People First's review, as well as some testimony at the hearing. Although, as noted above, see supra note 2, the Court is troubled by the testimony given at the hearing with respect

B.

An additional concern raised by both the United States and People First was the lack of an independent monitoring system in the Community Plan. In a related matter, the Parent Guardian Association questions those "provisions of Chapter VII concerning movement of ADC residents into community placement on average of eight (8) people each month." PGA Closing at 1. According to the Parent Guardian Association, the movement of eight ADC residents to the community per month is arbitrary and will result in the deterioration of services at ADC itself. Once again, given the history of this case and the particular circumstances from which this Community Plan arose, the Court has similar concerns. Accordingly, in order to assure that the provisions of the Community Plan are being implemented and in order to assure that each member of the class will receive adequate care and support, it is hereby ORDERED that:

1. The Monitor must approve the transition plan for each ADC resident prior to the resident's placement.
2. The Monitor, or her designee, must visit every residential site before placement unless the Monitor is already familiar with the home and its current residents and has no reason to believe the new person could not be adequately and appropriately served in this residential situation. When deemed necessary by the Monitor in her discretion, she or her designee may visit the sites of nonresidential service providers.
3. The Monitor, or her designee, must visit every person's placement within six weeks of the placement in order to review the first Independent Support Plan developed by the new provider and to ensure that any conditions stated in the Monitor's approval of the person's transition plan have been met.
4. The Monitor and her staff must review every placement quarterly thereafter, and also upon receipt of complaints or inquiries about the suitability of any placement

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to the conditions in the Community, the Court declines to accept the invitation of the United States and People First. In particular, the Court notes that the hearing in this matter was not intended to find the defendants in contempt and, therefore, defendants were not given an opportunity to respond to these assertions. Moreover, by extending the protections of the Community Plan to all class members, the Court notes that the Community Plan is designed to remedy these shortcomings. See infra part 3.C.

or related program. At least one of these reviews must be conducted by the Monitor and her team of expert consultants. If, upon review by the Monitor or her staff, the Monitor has reason to be concerned about any individual, the Monitor may conduct an additional review with her expert consultants.

5. The Monitor, or her designee, shall conduct an expedited review of all current placements for former ADC residents who are also members of the class as defined in People First v. Arlington Developmental Center, Civ. No. 92-2213, slip op. (W.D. Tenn. Sept. 26, 1995) (McCalla, J.).
6. During reviews of compliance with the Remedial Order, the Monitor shall include both the Strategy elements of the Community Plan and the "Implementation Indicators" as possible criteria for compliance, which is illustrated in Appendix B of defendants' Plan.

C.

In addition to an independent monitoring system, the United States and People First also seek unlimited access to all community facilities in order to monitor the defendants' compliance with the Community Plan. Although the Court agrees that both the United States and People First are entitled to have access to community facilities under the Remedial Order, the Court is concerned that unrestricted access will interfere with both the ability of the State of Tennessee to provide adequate services to the members of the class and the ability of the Court Monitor to adequately and effectively conduct the reviews that she is required to undertake. Accordingly, in order to avoid these potential problems, the Court hereby requires that both People First and the United States seek and obtain the approval of the Court Monitor prior to conducting any on-site review of any community facility.

D.

In its closing argument, People First requests that certain specific parts of the Community Plan be extended to cover members of the entire class. In particular, People First requests that

the Plan be modified to include all members of the class within the Individual Needs Analysis section of the Plan, rather than just those class members still at ADC. Moreover, People First seeks to have the Plan modified to include the provision of independent support coordination for all class members. Finally, similar to the United States, People First argues that the Plan should be modified to include a Plan of Correction to describe how non-compliance with the Remedial Order as identified by the Monitor and People First in their respective reviews will be modified.

After reviewing these requests, the Court notes that, in reality, People First is merely requesting that certain provisions of the Plan be extended to all members of the class. Because the Court has already ordered that all of the protections and benefits of the entire Plan, including the specific provisions identified by People First, be extended to the entire class, the Court declines People First's invitation to highlight specific parts of the Plan at the exclusion of others.

E.

In sum, after reviewing all of the testimony and other submittals in this matter, the Court hereby ADOPTS the Community Plan with the modifications set forth above.

III.  
Should the Court Order the Community Plan?

Having determined that the Community Plan should be approved, with the modifications set forth above, the Court must next decide whether to make the Community Plan an enforceable order of the Court. Both the United States and People First unequivocally request that the Plan be ordered by the Court. According to the United States, the "language of the Stipulation [and Order] more than adequately conveys the position of the United States that 'significant provisions' of the Plan would be ordered. In fact, the Stipulation's essential quid pro quo is just this: the United States and People First agreed to extend the deadlines that defendants had not met in exchange for a plan that would contain more specific, enforceable provisions for community placement and development than those contained in prior Court Orders." USA Closing Argument at 3. Likewise, People First argues that "the Defendants have agreed to the Stipulation in lieu of contempt sanctions, have agreed that parts of the plan will be enforceable, have identified in the plan itself those elements of the plan which, at a minimum, would be enforceable, and now seeks to have the Court not only not order any of the plan to be enforceable, but to have the Court also modify the Remedial Order and Stipulation." People First Closing at 5. Similarly, the Parent Guardian Association, although maintaining its continued opposition to many of the steps taken by the Court and the parties, requests that the Plan be enforceable as an order of this Court.

Although defendants have not responded directly to the parties' arguments, defendants nonetheless argue that the Court should not adopt this Plan as an enforceable order of this Court. Instead, defendants argue that the Court should merely "approve the Plan as a working document

and allow the State of Tennessee to make appropriate changes in the specific aspects of the Plan (including strategy implementation indicators, persons responsible, and target dates) upon consultation with and approval by the Monitor." Def.'s Closing Argument at 4.

A.

Defendants first argue that, because the Plan represents a "paradigm shift" in policy and action by the State of Tennessee, flexibility is crucial to the success of the Plan. According to the State, if the Court chooses to order the Plan, "then modifications can only be made through the process of Court hearings, a process which involves considerable time and significant expenditures of money in costs and legal fees which could better be served by use in the implementation of the Plan itself." Id. at 6.

The Court recognizes that, despite the extensiveness of the Plan as submitted, it is not a perfect plan. A number of changes will have to be made in order to improve the quality of services and support provided to the members of the class either in or soon to be transitioned to the community. In this respect, the Court acknowledges the defendants' concerns about the flexibility needed to successfully implement this Plan and successfully transition the State of Tennessee from an institution orientated provider to a community provider. The Court, however, disagrees with the defendants' contentions that if this plan is ordered by the Court, then this flexibility will be lost. Contrary to defendants' assertions, each and every change in the plan will not require an in-court hearing on the proposed changes. Instead, as the parties' experience with changes to the remedial order have shown, such changes must be made through negotiations among the parties and Monitor, must ultimately be approved by the Monitor, and then submitted

to the Court for final approval. Such changes to the remedial order have occurred on at least three occasions, each time without holding an in-court hearing.

Moreover, the Court notes that defendants themselves request that the any and all changes be approved by the Monitor. At that point, the vast majority of the work required to change the Plan will have been completed, and all that is left is for the parties to submit the change(s) to the Court for ultimate approval. Of course, the Court has ultimate approval over any proposed change and retains the right to hold a hearing on any such proposed change at its discretion.

B.

Defendants next argue that this Court should follow the procedure utilized by the Court and the parties with regard to the Institutional Plan, another plan required by the Stipulation and Order of 1996. According to defendants, "[b]y Agreed Order of the Parties, the Court ordered the Institutional Plan as a working document, changed by approval of the monitor, and further, submitted deadlines for implementation to be adopted and enforced in lieu of the original deadlines in the Remedial Order (Stipulation and Order Regarding the Compliance Plan, February 3, 1997). This same proposal is here being submitted by Defendants regarding the Community Plan." Id. at 7.

The problem with this argument is that the defendants are not seeking the same result as in the Institutional Compliance Plan. In that case, by defendants' own admission, "the Court ordered the Institutional Plan as a working document . . ." Id. at 7. In this case, defendants are asking the Court not to order the Community Plan, but rather, to merely approve it.

C.

Defendants also argue that if this Court chooses to "order the plan" then the State of Tennessee will face an exponential increase in the susceptibility of sanctions for any perceived "violation" of the Plan which would in turn constitute a violation of this Court's order.

According to the State,

With so many implementation factors in the Plan and such a significant amount of time and effort involved in the Plan's implementation, and since the proof from all parties indicates that the Plan is a paradigm shift in State policy of a very ambitious and significant nature, it is . . . unfair immediately to subject the State of Tennessee to a multiplied risk of exposure over and above that which it already has and for which it is presently being punished with fines.

Id.

Contrary to defendants' assertions, however, defendants will not automatically be held in contempt and sanctioned for any perceived "violation" of the Plan which would in turn constitute a violation of this Court's Order. The Sixth Circuit test for judging compliance with a court order is whether the contemnor "took all reasonable steps within their power to comply with the court's order." Glover v. Johnson, 934 F.2d 703, 708 (6th Cir. 1991).<sup>4</sup> Precisely what "all reasonable steps within [the contemnor's] power" are varies from case to case according to the requirements of the order and the particular circumstances of the case. In every case, however, a contemnor must have the ability to comply with the order before failure to comply can form the basis of contempt. McNeil v. Director, Patuxent Institution, 407 U.S. 245, 251 (1972); Maggio v. Zeitz, 33 U.S. 56, 72 (1948). Other than a showing of the impossibility of compliance, however, nothing short of substantial compliance, as measured by the test set forth in Peppers v. Barry, 873

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<sup>4</sup> For a more thorough discussion of a court's inherent power to hold parties in contempt and of the appropriateness of contempt sanctions, see United States v. State of Tennessee, 925 F. Supp. 1292, 1300-04 (W.D. Tenn. 1995).

F.2d 967 (6th Cir. 1989), will suffice to purge contempt for noncompliance with a court order. The Sixth Circuit has explicitly rejected the contention that a good faith effort is sufficient, *id.* at 968; TWM Mfg. Co. v. Dura Corp., 722 F.2d 1261, 1273 (6th Cir. 1983), and has not adopted the less demanding diligent efforts test favored in other circuits, e.g., Newman v. Graddick, 740 F.2d 1513, 1525 (11th Cir. 1984) (holding that "a person who attempts with reasonable diligence to comply with a court order should not be held in contempt").

At the same time, the Court recognizes that courts have been particularly unsympathetic to purported excuses for less-than-substantial compliance where the contemnor has participated in drafting the order against which compliance is measured. E.g., Glover, 934 F.2d at 708-09 (finding state prison officials in contempt for failing to abide by order consisting of negotiated settlement between the parties); see also Spallone v. United States, 493 U.S. 265, 276 (1990) (upholding a finding of contempt against city that had failed to take action required by the consent decree). In such cases, a party participating in the drafting of an order does so with an understanding of what it reasonably can accomplish. Accordingly, when the party subsequently fails to live up to the particulars of the order, it is more difficult for a court to excuse that failure than if the order had been imposed by the court in its entirety.

D.

Finally, the State argues that, in the event that compliance becomes a problem, the Court can always order the Plan in the future upon motion of any of the parties. In response to this argument, the United States argues that in light of the Stipulation and Order, in which the defendants agreed to the ordering of the Community Plan, the defendants past record of non-

compliance substantiates the need for making the plan enforceable by the Court. The Court agrees.

E.

In sum, the Court has before it an unequivocal Stipulation, entered in response to a motion for contempt, signed by mutual agreement of the parties, including the defendants, in which the defendants admitted they were in contempt of previous orders regarding conditions at ADC. In light of the specific genesis of this proceeding and the overall history of this case, the Court finds that the Community Plan should be enforceable as an Order of this Court. Accordingly, the Community Plan for West Tennessee is hereby ORDERED as an enforceable order of this Court.

IV.  
ORDER

For the reasons set forth above, it is hereby ORDERED that:

1. The Community Plan is hereby adopted by the Court;
2. The entire Community Plan is enforceable as a Court Order;
3. The Community Plan shall apply to all members of the class certified in People First v. Arlington Developmental Center, Civ. No. 92-2213, slip op. (W.D. Tenn. Sept. 26, 1995) (McCalla, J.); and
4. The Community Plan, as adopted and ordered by this Court, supplements, but does not rescind, the Remedial Order and other orders in this case, except with regard to the timeframes for compliance. In this respect, the defendants must remedy identified deficiencies in a timely manner.

In order to assure that the provisions of the Community Plan are being implemented in a manner to achieve compliance with the Remedial Order and in order to assure that each member of the class will receive adequate care and support, it is hereby ORDERED that:

1. The Monitor must approve the transition plan for each ADC resident prior to the resident's placement.
2. The Monitor, or her designee, must visit every residential site before placement unless the Monitor is already familiar with the home and its current residents and has no reason to believe the new person could not be adequately and appropriately served in this residential situation. When deemed necessary by the Monitor in her discretion, she or her designee may visit the sites of nonresidential service providers.
3. The Monitor, or her designee, must visit every person's placement within six weeks of the placement in order to review the first Independent Support Plan developed by the new provider and to ensure that any conditions stated in the Monitor's approval of the person's transition plan have been met.
4. The Monitor and her staff must review every placement quarterly thereafter, and also upon receipt of complaints or inquiries about the suitability of any placement or related program. At least one of these reviews must be conducted by the Monitor and her team of expert consultants. If, upon review by the Monitor or her staff, the Monitor has reason to be concerned about any individual, the Monitor may conduct an additional review with her expert consultants.
5. The Monitor, or her designee, shall conduct an expedited review of all current placements for former ADC residents who are also members of the class as defined in People First v. Arlington Developmental Center, Civ. No. 92-2213, slip op. (W.D. Tenn. Sept. 26, 1995) (McCalla, J.).
6. During reviews of compliance with the Remedial Order, the Monitor shall include both the Strategy elements of the Community Plan and the "Implementation Indicators" as possible criteria for compliance, which is illustrated in Appendix B of defendants' Plan.
7. The United States and People First are also to be provided free access to community facilities, as necessary, for monitoring the adequacy and appropriateness of placements. All reviews of any community facilities by either the United States or People First, however, must first be approved by the Monitor.

IT IS SO ORDERED this 21 day of August 1997

**s/Jon Phipps McCalla**

  
JON P. McCALLA  
UNITED STATES DISTRICT JUDGE